



## State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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STATE EMPLOYEES ASSOCIATION	:	
OF NEW HAMPSHIRE, SEIU,	:	
LOCAL 1984	:	
	:	CASE NO. S-0391
Petitioner	:	
	:	
v.	:	DECISION NO. 95-64
	:	
NEW HAMPSHIRE UNIFIED COURT	:	
SYSTEM	:	
	:	
Respondent	:	

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Representing State Employees Association:

Michael Reynolds, Esq.

Representing the Administrative Office of the Courts:

Elizabeth Hodges, Esq.  
Christopher P. Reid, Esq.

Also appearing:

Kathy J. Duval, State Employees Association

BACKGROUND

On December 13, 1994, The State Employees Association (Association) filed a petition to certify a bargaining unit of twenty-six court reporters and stenographers. On December 27, 1994, the New Hampshire Unified Court System filed its exception to the Petition for Certification and a Motion to Dismiss. The matter was heard before the Board on February 16, 1995, at which time no testimony was offered as it was agreed between the parties that their differences centered on a question of law. The record was held open for submission of Memoranda of Law which were received on March

15, 1995. Subsequently, legislation was introduced in the New Hampshire House of Representatives which would have disposed of the question. Final action was taken on July 3, 1995, and was not dispositive of the question of whether or not court employees are "public employees" for purposes of RSA 273-A, the Public Employee Labor Relations Act.

#### FINDINGS OF FACT

1. RSA 273-A:1 X defines "public employer" as "the state and any political subdivision thereof, any quasi-public corporation, council, commission, agency or authority, and the state university system." The employees of such public employers are public employees who may organize for collective bargaining purposes. RSA 273-A:1 IX.
  
2. The State Employees Association became the exclusive bargaining agent for sixteen grandfathered units, State Employees Association v. N.H. Public Employee Labor Relations Board, 116 N.H. 653 (November 9, 1976), along with several other bargaining units of state executive branch employees, within the first year of enactment of the Public Employee Labor Relations Act. RSA 273-A:9 provided an orderly method of dealing with "all interested bargaining units" so that consistent terms and conditions of employment were in place throughout the various agencies and departments, each with its own bargaining unit. This Board has seen no evidence that RSA 273-A:9 was enacted to limit those who might bargain in the future to executive branch employees. The Association now seeks certification of a bargaining unit to consist of twenty-six court reporters and stenographers who are employees of the unified Office of the Court.
  
3. A separation of the legislative, executive and judicial powers of government is constitutionally addressed, N.H. Const., pt. 1, art 37, and three co-equal branches of government make up state government.
  
4. This Board determined the legislature, one of the co-equal branches, to be a "public employer" in Robert Cushing v. House Legislative Facilities

Subcommittee and Lee Marden, Chief of Staff of the New Hampshire House of Representatives, et als  
Decision No. 94-96 (February 10, 1995). The point of that decision was that, as one of three co-equal branches of the state, the legislature is a "public employer" as contemplated by RSA 273-A:1 X.

5. Employees of the judicial branch are also employees of one of the three co-equal branches of the state. It is noted that, for at least the past decade, judicial employees have received that which has been bargained under RSA 273-A:9, "all fringe benefits and salary increases as provided for classified state employees including membership in the state retirement system, Blue Cross and Blue Shield coverage, dental insurance, life insurance coverage, and annual and sick leave benefits." RSA 490:28. They have had no voice in the acceptance or rejection of the contract providing these terms and conditions of employment however. And, this Board is aware of nothing in the law that exempts judicial employees from receiving workers' compensation, under RSA Chapter 281-A, as it applies to and is administered for state employees. Thus employees of the judiciary are employees of the state under RSA 273-A:1 X, and, as such, they are "public employees" who may organize for purposes of collective bargaining, RSA 273-A:1 IX.
6. Subsequent to the issuance of the above cited Cushing decision and the introduction of the present petition, legislation was introduced which was intended to create exceptions which would have exempted employees of the legislature and judiciary from the definition of "public employee" for the purposes of RSA Chapter 273-A. The final version of House Bill No. 2 was passed on July 3, 1995, and contained no such exceptions. Though there was this opportunity to amend the Public Employee Labor Relations Act, the legislature did not take action to exempt employees of legislative and judicial branches from the definition of "public employees" who may organize to bargain.

DECISION AND ORDER

Employees of the judicial branch of government who otherwise qualify as "public employees" under RSA 273-A:1 IX are eligible to organize a bargaining unit to negotiate with representatives of the New Hampshire Unified Court System. The statutorily required showing of interest has been made, RSA 273-A:10 I (a), and a bargaining unit consisting of twenty-six court reporters and stenographers who are regular employees of the New Hampshire Unified Court System is the appropriate bargaining unit to be certified, there being no objection to its composition. An order of election shall next be issued.

So ordered.

Signed this 15th day of SEPTEMBER, 1995.

  
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EDWARD J. HASELTINE  
Chairman

By majority vote. Members Richard Roulx and E. Vincent Hall voting in the majority, Chairman Edward J. Haseltine voting in the minority.

Chairman Haseltine's dissenting opinion is as follows:

I dissent from the majority opinion for the following reasons which are basically the same reasons for my dissent in Cushing v. House Legislative Services Subcommittee et al., Decision No. 94-19 (May 20, 1994):

- a) The legislative history of RSA 273-A is silent on the issue of whether its provisions should be extended to the judicial branch of government.
- b) To the extent provisions of RSA 273-A speak to the extension of bargaining rights to state employees, the Act suggests, by referencing the authority of the Governor on behalf of the

Executive Department, that it is those executive branch employees who are covered, not employees of the co-equal legislative and judicial branches. RSA 273-A:9 supports this analysis. The joint committee on employee relations established thereby conspicuously omits any representative from the judicial branch.

- c) Since the issue in this case presents a substantial policy matter and given the legislature's silence in RSA 273-A as to its desires relative to the employees of the legislative and judicial branches, I feel this issue should be resolved legislatively.